

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**ENERGY MANAGEMENT  
COLLABORATIVE, LLC, a Minnesota  
limited liability company,**

### **Plaintiff/Counterdefendant,**

V.

DARWIN TECH LLC, a California limited liability company, JASON WHITNEY, an individual, and DOES 1-100, as follows,

#### **Defendants/Counterclaimants.**

CASE NO. 8:22-cv-00952-JWH(ADSx)

**STIPULATED PROTECTIVE ORDER  
FOR LITIGATION INVOLVING  
PATENTS, HIGHLY SENSITIVE  
CONFIDENTIAL INFORMATION  
AND/OR TRADE SECRETS**

**DISCOVERY DOCUMENT:  
REFERRED TO MAGISTRATE  
JUDGE AUTUMN D. SPAETH**

Assigned to Hon. John W. Holcomb  
Crt. Rm.: 9D

## AND RELATED COUNTERCLAIMS.

1       1. PURPOSES AND LIMITATIONS

2              Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be  
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
6 following Stipulated Protective Order. The parties acknowledge that this Order does not  
7 confer blanket protections on all disclosures or responses to discovery and that the  
8 protection it affords from public disclosure and use extends only to the limited  
9 information or items that are entitled to confidential treatment under the applicable legal  
10 principles. The parties further acknowledge, as set forth in Section 13.3, below, that this  
11 Stipulated Protective Order does not entitle them to file confidential information under  
12 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the  
13 standards that will be applied when a party seeks permission from the court to file material  
14 under seal.

15       2. DEFINITIONS

16       2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
17 information or items under this Order.

18       2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it  
19 is generated, stored or maintained) or tangible things that qualify for protection under  
20 Federal Rule of Civil Procedure 26(c).

21       2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their  
22 support staff).

23       2.4 Designating Party: a Party or Non-Party that designates information or items  
24 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
26 CONFIDENTIAL – SOURCE CODE.”

27       2.5 Disclosure or Discovery Material: all items or information, regardless of the  
28 medium or manner in which it is generated, stored, or maintained (including, among other

1 things, testimony, transcripts, and tangible things), that are produced or generated in  
2 disclosures or responses to discovery in this matter.

3       2.6 Expert: a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an  
5 expert witness or as a consultant in this action, (2) is not a past or current employee of a  
6 Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to  
7 become an employee of a Party or of a Party's competitor.

8       2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information  
9 or Items: extremely sensitive "Confidential Information or Items," disclosure of which to  
10 another Party or Non-Party would create a substantial risk of serious harm that could not  
11 be avoided by less restrictive means.

12       2.8 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:  
13 extremely sensitive "Confidential Information or Items" representing computer code and  
14 associated comments and revision histories, formulas, engineering specifications, or  
15 schematics that define or otherwise describe in detail the algorithms or structure of  
16 software or hardware designs, disclosure of which to another Party or Non-Party would  
17 create a substantial risk of serious harm that could not be avoided by less restrictive means

18       2.9 Non-Party: any natural person, partnership, corporation, association, or other  
19 legal entity not named as a Party to this action.

20       2.10 Outside Counsel of Record: attorneys who are not employees of a party to  
21 this action but are retained to represent or advise a party to this action and have appeared  
22 in this action on behalf of that party or are affiliated with a law firm which has appeared  
23 on behalf of that party.

24       2.11 Party: any party to this action, including all of its officers, directors,  
25 employees, consultants, retained experts, and Outside Counsel of Record (and their  
26 support staffs).

27       2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
28 Material in this action.

1       2.13 Professional Vendors: persons or entities that provide litigation support  
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
3 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
4 their employees and subcontractors.

5       2.14 Protected Material: any Disclosure or Discovery Material that is designated  
6 as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
7 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

8       2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from  
9 a Producing Party.

10      3. SCOPE

11       The protections conferred by this Stipulation and Order cover not only Protected  
12 Material (as defined above), but also (1) any information copied or extracted from  
13 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
14 Material; and (3) any testimony, conversations, or presentations by Parties or their  
15 Counsel that might reveal Protected Material. However, the protections conferred by this  
16 Stipulation and Order do not cover the following information: (a) any information that is  
17 in the public domain at the time of disclosure to a Receiving Party or becomes part of the  
18 public domain after its disclosure to a Receiving Party as a result of publication not  
19 involving a violation of this Order, including becoming part of the public record through  
20 trial or otherwise; and (b) any information known to the Receiving Party prior to the  
21 disclosure or obtained by the Receiving Party after the disclosure from a source who  
22 obtained the information lawfully and under no obligation of confidentiality to the  
23 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
24 agreement or order.

25      4. DURATION

26       Even after final disposition of this litigation, the confidentiality obligations imposed  
27 by this Order shall remain in effect until a Designating Party agrees otherwise in writing  
28 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)

1 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final  
2 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,  
3 trials, or reviews of this action, including the time limits for filing any motions or  
4 applications for extension of time pursuant to applicable law.

5 **5. DESIGNATING PROTECTED MATERIAL**

6       5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
7 Party or Non-Party that designates information or items for protection under this Order  
8 must take care to limit any such designation to specific material that qualifies under the  
9 appropriate standards. To the extent it is practical to do so, the Designating Party must  
10 designate for protection only those parts of material, documents, items, or oral or written  
11 communications that qualify – so that other portions of the material, documents, items, or  
12 communications for which protection is not warranted are not swept unjustifiably within  
13 the ambit of this Order.

14       Mass, indiscriminate, or routinized designations are prohibited. Designations that  
15 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
16 to unnecessarily encumber or retard the case development process or to impose  
17 unnecessary expenses and burdens on other parties) expose the Designating Party to  
18 sanctions.

19       If it comes to a Designating Party's attention that information or items that it  
20 designated for protection do not qualify for protection at all or do not qualify for the level  
21 of protection initially asserted, that Designating Party must promptly notify all other  
22 parties that it is withdrawing the mistaken designation.

23       5.2 Manner and Timing of Designations. Except as otherwise provided in this  
24 Order (see, e.g., second paragraph of section 5.3(a) below), or as otherwise stipulated or  
25 ordered, Disclosure or Discovery

26       Material that qualifies for protection under this Order must be clearly so designated  
27 before the material is disclosed or produced.

28       5.3 Designation in conformity with this Order requires:

1                         (a) for information in documentary form (e.g., paper or electronic documents,  
2 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
3 Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
4 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to  
5 each page that contains protected material. If only a portion or portions of the material on  
6 a page qualifies for protection, the Producing Party also must clearly identify the protected  
7 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
8 each portion, the level of protection being asserted.

9                         A Party or Non-Party that makes original documents or materials available for  
10 inspection need not designate them for protection until after the inspecting Party has  
11 indicated which material it would like copied and produced. During the inspection and  
12 before the designation, all of the material made available for inspection shall be deemed  
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party  
14 has identified the documents it wants copied and produced, the Producing Party must  
15 determine which documents, or portions thereof, qualify for protection under this Order.  
16 Then, before producing the specified documents, the Producing Party must affix the  
17 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
18 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to  
19 each page that contains Protected Material. If only a portion or portions of the material on  
20 a page qualifies for protection, the Producing Party also must clearly identify the protected  
21 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
22 each portion, the level of protection being asserted.

23                         (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
24 the Designating Party identify on the record, before the close of the deposition, hearing, or  
25 other proceeding, all protected testimony and specify the level of protection being  
26 asserted. When it is impractical to identify separately each portion of testimony that is  
27 entitled to protection and it appears that substantial portions of the testimony may qualify  
28 for protection, the Designating Party may invoke on the record (before the deposition,

1 hearing, or other proceeding is concluded) a right to have up to 21 days to identify the  
 2 specific portions of the testimony as to which protection is sought and to specify the level  
 3 of protection being asserted. Only those portions of the testimony that are appropriately  
 4 designated for protection within the 21 days shall be covered by the provisions of this  
 5 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the  
 6 deposition or up to 21 days afterwards if that period is properly invoked, that the entire  
 7 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 8 ATTORNEYS’ EYES ONLY.”

9 Parties shall give the other parties notice if they reasonably expect a deposition,  
 10 hearing or other proceeding to include Protected Material so that the other parties can  
 11 ensure that only authorized individuals who have signed the “Acknowledgment and  
 12 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a  
 13 document as an exhibit at a deposition shall not in any way affect its designation as  
 14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

15 Transcripts containing Protected Material shall have an obvious legend on the title  
 16 page that the transcript contains Protected Material, and the title page shall be followed by  
 17 a list of all pages (including line numbers as appropriate) that have been designated as  
 18 Protected Material and the level of protection being asserted by the Designating Party.  
 19 The Designating Party shall inform the court reporter of these requirements. Any  
 20 transcript that is prepared before the expiration of a 21-day period for designation shall be  
 21 treated during that period as if it had been designated “HIGHLY CONFIDENTIAL –  
 22 ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration  
 23 of that period, the transcript shall be treated only as actually designated.

24 (c) for information produced in some form other than documentary and for any  
 25 other tangible items, that the Producing Party affix in a prominent place on the exterior of  
 26 the container or containers in which the information or item is stored the legend  
 27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
 28 HIGHLY CONFIDENTIAL – SOURCE CODE. If only a portion or portions of the

1 information or item warrant protection, the Producing Party, to the extent practicable,  
2 shall identify the protected portion(s) and specify the level of protection being asserted.

3       5.4     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
4 to designate qualified information or items does not, standing alone, waive the  
5 Designating Party's right to secure protection under this Order for such material. Upon  
6 timely correction of a designation, the Receiving Party must make reasonable efforts to  
7 assure that the material is treated in accordance with the provisions of this Order.

8       6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9       6.1     Timing of Challenges. Any Party or Non-Party may challenge a  
10 designation of confidentiality at any time that is consistent with the Court's Scheduling  
11 Order.

12       6.2     Meet and Confer. The Challenging Party shall initiate the dispute  
13 resolution process by providing written notice of each designation it is challenging and  
14 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has  
15 been made, the written notice must recite that the challenge to confidentiality is being  
16 made in accordance with this specific paragraph of the Protective Order. The parties shall  
17 attempt to resolve each challenge in good faith and must begin the process by conferring  
18 directly (in voice to voice dialogue; other forms of communication are not sufficient)  
19 within 14 days of the date of service of notice. In conferring, the Challenging Party must  
20 explain the basis for its belief that the confidentiality designation was not proper and must  
21 give the Designating Party an opportunity to review the designated material, to reconsider  
22 the circumstances, and, if no change in designation is offered, to explain the basis for the  
23 chosen designation. A Challenging Party may proceed in accordance with the procedures  
24 in Local Rule 37.1 et seq, if it has engaged in this meet and confer process first or  
25 establishes that the Designating Party is unwilling to participate in the meet and confer  
26 process in a timely manner..

27       6.3     The burden of persuasion in any such challenge proceeding shall be on the  
28 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to

1 harass or impose unnecessary expenses and burdens on other parties), may expose the  
2 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn  
3 the confidentiality designation, all parties shall continue to afford the material in question  
4 the level of protection to which it is entitled under the Producing Party's designation until  
5 the Court rules on the challenge.

6       7. ACCESS TO AND USE OF PROTECTED MATERIAL

7       7.1 Basic Principles. A Receiving Party may use Protected Material that is  
8 disclosed or produced by another Party or by a Non-Party in connection with this case  
9 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
10 Material may be disclosed only to the categories of persons and under the conditions  
11 described in this Order. When the litigation has been terminated, a Receiving Party must  
12 comply with the provisions of section 13 below (FINAL DISPOSITION).

13       Protected Material must be stored and maintained by a Receiving Party at a location  
14 and in a secure manner<sup>1</sup> that ensures that access is limited to the persons authorized under  
15 this Order.

16       7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
17 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
18 may disclose any information or item designated “CONFIDENTIAL” only to:

19           (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
20 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
21 disclose the information for this litigation and who have signed the “Acknowledgment and  
22 Agreement to Be Bound” that is attached hereto as Exhibit A;

23           (b) the officers, directors, and employees of the Receiving Party to whom  
24 disclosure is reasonably necessary for this litigation and who have signed the  
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26           (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure

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28       <sup>1</sup> It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in  
password-protected form.

1 is reasonably necessary for this litigation and who have signed the “Acknowledgment and  
2 Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff, professional jury or trial consultants, and  
5 Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
6 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (f) during their depositions, witnesses in the action to whom disclosure is  
8 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
9 Bound” (Exhibit A), **unless otherwise agreed by the Designating Party or ordered by**  
10 **the court.** Pages of transcribed deposition testimony or exhibits to depositions that reveal  
11 Protected Material must be separately bound by the court reporter and may not be  
12 disclosed to anyone except as permitted under this Stipulated Protective Order.

13 (g) the author or recipient of a document containing the information or a  
14 custodian or other person who otherwise possessed or knew the information.

15 7.3 **Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**  
16 and **“HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items.** Unless  
17 otherwise ordered by the court or permitted in writing by the Designating Party, a  
18 Receiving Party may disclose any information or item designated “HIGHLY  
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
20 SOURCE CODE” only to:

21 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
23 disclose the information for this litigation and who have signed the “Acknowledgment and  
24 Agreement to Be Bound” that is attached hereto as Exhibit A;

25 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
26 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to  
27 Be Bound” (Exhibit A);

28 (c) the court and its personnel;

1                 (d) court reporters and their staff, professional jury or trial consultants, and  
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
3 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

4                 (e) the author or recipient of a document containing the information or a  
5 custodian or other person who otherwise possessed or knew the information.

6                 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
8 SOURCE CODE” Information or Items to Designated Experts.

9                 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the  
10 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
11 information or item that has been designated “HIGHLY CONFIDENTIAL –  
12 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”  
13 pursuant to paragraph 7.3(c) first must make a written request to the Designating Party  
14 that (1) identifies the general categories of “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”  
16 information that the Receiving Party seeks permission to disclose to the Expert, (2) sets  
17 forth the full name of the Expert and the city and state of his or her primary residence, (3)  
18 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current  
19 employer(s), (5) identifies each person or entity from whom the Expert has received  
20 compensation or funding for work in his or her areas of expertise or to whom the expert  
21 has provided professional services, including in connection with a litigation, at any time  
22 during the preceding five years,<sup>2</sup> and (6) identifies (by name and number of the case, filing  
23 date, and location of court) any litigation in connection with which the Expert has offered

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27                 <sup>2</sup> If the Expert believes any of this information is subject to a confidentiality obligation to  
28 a third-party, then the Expert should provide whatever information the Expert believes can  
be disclosed without violating any confidentiality agreements, and the Party seeking to  
disclose to the Expert shall be available to meet and confer with the Designating Party  
regarding any such engagement.

1 expert testimony, including through a declaration, report, or testimony at a deposition or  
2 trial, during the preceding five years.<sup>3</sup>

3 (b) A Party that makes a request and provides the information specified in the  
4 preceding respective paragraphs may disclose the subject Protected Material to the  
5 identified Expert unless, within 14 days of delivering the request, the Party receives a  
6 written objection from the Designating Party. Any such objection must set forth in detail  
7 the grounds on which it is based.

8 (c) A Party that receives a timely written objection must meet and confer with the  
9 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
10 agreement within seven days of the written objection. If no agreement is reached, the  
11 Party seeking to make the disclosure to the Expert may file a motion as provided in Civil  
12 Local Rule 37 (and in compliance with Civil Local Rule 79-5, if applicable) seeking  
13 permission from the court to do so. Any such motion must describe the circumstances  
14 with specificity, set forth in detail the reasons why the disclosure to the Expert is  
15 reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest  
16 any additional means that could be used to reduce that risk. In addition, any such motion  
17 must be accompanied by a competent declaration describing the parties' efforts to resolve  
18 the matter by agreement (i.e., the extent and the content of the meet and confer  
19 discussions) and setting forth the reasons advanced by the Designating Party for its refusal  
20 to approve the disclosure.

21 In any such proceeding, the Party opposing disclosure to the Expert shall bear the  
22 burden of proving that the risk of harm that the disclosure would entail (under the  
23 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
24 Material to its Expert.

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26 \_\_\_\_\_  
27 <sup>3</sup> It may be appropriate in certain circumstances to restrict the Expert from undertaking  
28 certain limited work prior to the termination of the litigation that could foreseeably result  
in an improper use of the Designating Party's "HIGHLY CONFIDENTIAL –  
ATTORNEYS' EYES ONLY" information.

1       8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
2       OTHER LITIGATION

3           If a Party is served with a subpoena or a court order issued in other litigation that  
4       compels disclosure of any information or items designated in this action as  
5       “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
6       “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

7           (a) promptly notify in writing the Designating Party. Such notification shall  
8       include a copy of the subpoena or court order;

9           (b) promptly notify in writing the party who caused the subpoena or order to  
10      issue in the other litigation that some or all of the material covered by the subpoena or  
11      order is subject to this Protective Order. Such notification shall include a copy of this  
12      Stipulated Protective Order; and

13           (c) cooperate with respect to all reasonable procedures sought to be pursued by  
14      the Designating Party whose Protected Material may be affected.<sup>4</sup>

15           If the Designating Party timely seeks a protective order, the Party served with the  
16      subpoena or court order shall not produce any information designated in this action as  
17      “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
18      “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court  
19      from which the subpoena or order issued, unless the Party has obtained the Designating  
20      Party’s permission. The Designating Party shall bear the burden and expense of seeking  
21      protection in that court of its confidential material – and nothing in these provisions  
22      should be construed as authorizing or encouraging a Receiving Party in this action to  
23      disobey a lawful directive from another court.

24       9. SOURCE CODE

25           (a) To the extent production of source code becomes necessary in this case, a

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27          <sup>4</sup> The purpose of imposing these duties is to alert the interested parties to the existence of  
28          this Protective Order and to afford the Designating Party in this case an opportunity to try  
                  to protect its confidentiality interests in the court from which the subpoena or order issued.

1 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE  
2 CODE” if it comprises or includes confidential, proprietary or trade secret source code.

3 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE  
4 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL  
5 – SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information [*Optional:* including the  
7 Prosecution Bar set forth in Paragraph 8], and may be disclosed only to the individuals to  
8 whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be  
9 disclosed, as set forth in Paragraphs 7.3 and 7.4.

10 (c) Any source code produced in discovery shall be made available for  
11 inspection, in a format allowing it to be reasonably reviewed and searched, during normal  
12 business hours or at other mutually agreeable times, at an office of the Producing Party’s  
13 counsel or another mutually agreed upon location. The source code shall be made  
14 available for inspection on a secured computer in a secured room without Internet access  
15 or network access to other computers, and the Receiving Party shall not copy, remove, or  
16 otherwise transfer any portion of the source code onto any recordable media or recordable  
17 device. The Producing Party may visually monitor the activities of the Receiving Party’s  
18 representatives during any source code review, but only to ensure that there is no  
19 unauthorized recording, copying, or transmission of the source code.<sup>5</sup>

20 (d) The Receiving Party may request paper copies of limited portions of source  
21 code that are reasonably necessary for the preparation of court filings, pleadings, expert  
22 reports, or other papers, or for deposition or trial, but shall not request paper copies for the  
23 purposes of reviewing the source code other than electronically as set forth in paragraph  
24 (c) in the first instance. The Producing Party shall provide all such source code in paper

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26 <sup>5</sup> It may be appropriate under certain circumstances to require the Receiving Party to keep  
27 a paper log indicating the names of any individuals inspecting the source code and dates  
28 and times of inspection, and the names of any individuals to whom paper copies of  
portions of source code are provided.

1 form including bates numbers and the label “HIGHLY CONFIDENTIAL - SOURCE  
2 CODE.” The Producing Party may challenge the amount of source code requested in hard  
3 copy form pursuant to the dispute resolution procedure and timeframes set forth in  
4 Paragraph 6 whereby the Producing Party is the “Challenging Party” and the Receiving  
5 Party is the “Designating Party” for purposes of dispute resolution.

6 (e) The Receiving Party shall maintain a record of any individual who has  
7 inspected any portion of the source code in electronic or paper form. The Receiving Party  
8 shall maintain all paper copies of any printed portions of the source code in a secured,  
9 locked area. The Receiving Party shall not create any electronic or other images of the  
10 paper copies and shall not convert any of the information contained in the paper copies  
11 into any electronic format. The Receiving Party shall only make additional paper copies if  
12 such additional copies are (1) necessary to prepare court filings, pleadings, or other papers  
13 (including a testifying expert’s expert report), (2) necessary for deposition, or (3)  
14 otherwise necessary for the preparation of its case. Any paper copies used during a  
15 deposition shall be retrieved by the Producing Party at the end of each day and must not  
16 be given to or left with a court reporter or any other unauthorized individual.<sup>6</sup>

17 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
18 **THIS LITIGATION**

19 10.1 The terms of this Order are applicable to information produced by a Non-  
20 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY  
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
22 SOURCE CODE”. Such information produced by Non-Parties in connection with this  
23 litigation is protected by the remedies and relief provided by this Order. Nothing in these  
24 provisions should be construed as prohibiting a Non-Party from seeking additional

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25 <sup>6</sup> The nature of the source code at issue in a particular case may warrant additional  
26 protections or restrictions. For example, it may be appropriate under certain circumstances  
27 to require the Receiving Party to provide notice to the Producing Party before including  
28 “HIGHLY CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading,  
or expert report.

1 protections.

2       10.2 In the event that a Party is required, by a valid discovery request, to produce  
3 a Non-Party's confidential information in its possession, and the Party is subject to an  
4 agreement with the Non-Party not to produce the Non-Party's confidential information,  
5 then the Party shall:

6           (a) promptly notify in writing the Requesting Party and the Non-Party that some  
7 or all of the information requested is subject to a confidentiality agreement with a Non-  
8 Party;

9           (b) promptly provide the Non-Party with a copy of the Stipulated Protective  
10 Order in this litigation, the relevant discovery request(s), and a reasonably specific  
11 description of the information requested; and

12           (c) make the information requested available for inspection by the Non-Party.

13       10.3 If the Non-Party fails to object or seek a protective order from this court  
14 within 14 days of receiving the notice and accompanying information, the Receiving Party  
15 may produce the Non-Party's confidential information responsive to the discovery  
16 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not  
17 produce any information in its possession or control that is subject to the confidentiality  
18 agreement with the Non-Party before a determination by the court.<sup>7</sup> Absent a court order  
19 to the contrary, the Non-Party shall bear the burden and expense of seeking protection in  
20 this court of its Protected Material.

21       11. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22       If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
23 Protected Material to any person or in any circumstance not authorized under this  
24 Stipulated Protective Order, the Receiving Party must immediately:

25           (a) notify in writing the Designating Party of the unauthorized disclosures;

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27       <sup>7</sup> The purpose of this provision is to alert the interested parties to the existence of  
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect  
its confidentiality interests in this court.

1                   (b) use its best efforts to retrieve all unauthorized copies of the Protected  
2 Material;

3                   (c) inform the person or persons to whom unauthorized disclosures were made of  
4 all the terms of this Order; and

5                   (d) request such person or persons to execute the “Acknowledgment and  
6 Agreement to Be Bound” that is attached hereto as Exhibit A.

7                  12.INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
8                  PROTECTED MATERIAL

9                  When a Producing Party gives notice to Receiving Parties that certain inadvertently  
10 produced material is subject to a claim of privilege or other protection, the obligations of  
11 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
12 This provision is not intended to modify whatever procedure may be established in an e-  
13 discovery order that provides for production without prior privilege review. Pursuant to  
14 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the  
15 effect of disclosure of a communication or information covered by the attorney-client  
16 privilege or work product protection, the parties may incorporate their agreement in the  
17 stipulated protective order submitted to the court.

18                  13.MISCELLANEOUS

19                  13.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
20 to seek its modification by the court in the future.

21                  13.2 Right to Assert Other Objections. By stipulating to the entry of this  
22 Protective Order no Party waives any right it otherwise would have to object to disclosing  
23 or producing any information or item on any ground not addressed in this Stipulated  
24 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
25 evidence of any of the material covered by this Protective Order.

26                  13.3 Filing Protected Material. Without written permission from the Designating  
27 Party or a court order secured after appropriate notice to all interested persons, a Party  
28 may not file in the public record in this action any Protected Material. A Party that seeks

1 to file under seal any Protected Material must comply with Civil Local Rule 79-5.  
2 Protected Material may only be filed under seal pursuant to a court order authorizing the  
3 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a  
4 sealing order will issue only upon a request establishing that the Protected Material at  
5 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under  
6 the law. If a Receiving Party's request to file Protected Material under seal pursuant to  
7 Civil Local Rule 79-5 is denied by the court, then the Receiving Party may file the  
8 Protected Material in the public record pursuant to Civil Local Rule 79-5 unless otherwise  
9 instructed by the court.

10 **14. FINAL DISPOSITION**

11 Within 60 days after the final disposition of this action, as defined in paragraph 4,  
12 each Receiving Party must return all Protected Material to the Producing Party or destroy  
13 such material. As used in this subdivision, "all Protected Material" includes all copies,  
14 abstracts, compilations, summaries, and any other format reproducing or capturing any of  
15 the Protected Material. Whether the Protected Material is returned or destroyed, the  
16 Receiving Party must submit a written certification to the Producing Party (and, if not the  
17 same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies  
18 (by category, where appropriate) all the Protected Material that was returned or destroyed  
19 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
20 compilations, summaries or any other format reproducing or capturing any of the  
21 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
22 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
23 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
24 work product, and consultant and expert work product, even if such materials contain  
25 Protected Material. Any such archival copies that contain or constitute Protected Material  
26 remain subject to this Protective Order as set forth in Section 4 (DURATION).

27 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
28

1 Dated: September 28, 2023

COZEN O'CONNOR

2 By: /s/ Erik L. Jackson  
3 Erik L. Jackson  
4 Attorneys for Plaintiff

5 Dated: September 28, 2023

GREENBERG TRAURIG, LLP

6  
7 By: /s/ Colin W. Fraser  
8 Colin Fraser  
9 Robert A. Hill  
10 Attorneys for Defendants  
11 DARWIN TECH LLC and JASON  
12 WHITNEY

**SIGNATURE ATTESTATION PURSUANT TO L.R. 5-4.3.4(a)(2)(i)**

13 Pursuant to Local Civil Rule 5-4.3.4(a)(2)(i), I hereby attest that the other  
14 signatories listed, and on whose behalf the filing is submitted, concur in the filing's  
15 content and have authorized this filing.

16 Dated: September 28, 2023

GREENBERG TRAURIG, LLP

17 By: /s/ Colin Fraser  
18 Colin Fraser

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
22

24 DATED: 09/29/2023

25 \_\_\_\_\_ /s/ Autumn D. Spaeth  
26 Hon. Autumn D. Spaeth  
27 United States Magistrate Judge  
28

**EXHIBIT A**

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
have read the foregoing stipulated protective order in its entirety and understand the Stipulated Protective Order that was issued by  
the United States District Court for the Central District of California on  
\_\_\_\_\_[date] in the case of Energy Management Collaborative, LLC v.  
Energy Management Collaborative, LLC, Cae No. 8:22-cv-00952 JWH(ADSx). I agree to comply with and to be  
bound by all the terms of this Stipulated Protective Order and I understand and  
acknowledge that failure to so comply could expose me to sanctions and punishment in  
the event of contempt. I solemnly promise that I will not disclose in any manner any  
information or item that is subject to this Stipulated Protective Order to any person or  
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone  
number] as my California agent for service of process in connection with this action or  
any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]